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AUG 23 2005

OFFICE OF PETITIONS

In re Application of	:
David Zahner	: DECISION ON PETITIONS
Application No. 09/916,603	: UNDER 37 CFR 1.78(a)(3) AND
Filed: July 27, 2001	: UNDER 37 CFR 1.78(a)(6)
Attorney Docket No. 4042.026.200	:

This is a decision on the petition filed November 24, 2004, which is being treated as a petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 119(e) for the benefit of the prior-filed nonprovisional and provisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

The amendment filed November 24, 2004, states that Application No. 09/738,545, filed December 15, 2000, claims benefit to Provisional Application Nos. 60/143,853 filed July 15, 1999 and Provisional Application No. 60/150,876, filed August 26, 1999. However, Application No. 09/738,545 was filed more than twelve months of the filing dates of the provisional applications.

Accordingly, before the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) can be granted, a renewed petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) and a Certificate of Correction (with fee of \$100) should be submitted.

Further correspondence with respect to this matter should be addressed as follows:


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Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.


Karen Creasy
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy